

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Avista Corporation,

Bonneville Power Administration,

Idaho Power Company,

The Montana Power Company,

Nevada Power Company,

PacifiCorp,

Portland General Electric Company,

Puget Sound Energy, Inc.,

Sierra Pacific Power Company

Docket No. RT01-35-000

**SUPPLEMENTAL COMPLIANCE FILING
AND
REQUEST FOR DECLARATORY ORDER
PURSUANT TO ORDER 2000**

II. INTRODUCTION

B. Nature of Filing

2. Important Conditions to Implementation

a. Conditions Applicable to All Filing Utilities

[. . .

3. RTO West's successful completion of the underwriting process to obtain the insurance required by the Agreement Limiting Liability Among RTO West Participants. (The form of Agreement Limiting Liability Among RTO West Participants is attached to this filing as Attachment Y; Attachment Z to this filing contains a summary of its provisions. Section V.C. 7 explains why this agreement is critical to RTO West implementation.)

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V. DESCRIPTION OF RTO PROPOSAL AND HOW IT MEETS ORDER 2000 REQUIREMENTS

[. . .]

C. RTO West Contract Structure

[. . .]

7. Agreement Limiting Liability Among RTO West Participants

The Transmission Operating Agreement includes a provision, Section 17, which requires parties executing a Transmission Operating Agreement to also execute a multiparty Agreement Limiting Liability Among RTO West Participants (the "Liability

Agreement”). The Liability Agreement is attached to the Transmission Operating Agreement as an Exhibit.

The Liability Agreement is intended to limit the liability of parties to RTO West to manageable and insurable levels. It is contemplated that the parties signing Generation Integration Agreements and Load Integration Agreements would be similarly required to become signatories to the Liability Agreement. This understanding is central to the overall plan to manage RTO West risk exposure. (Included in Stage 1 filing as Attachment Y; in addition, Attachment Z contains a summary of the Liability Agreement and an explanation of its importance to the RTO West participants.)

The key objectives of the Liability Agreement include:

- Preservation of the status quo among Northwest control areas;
- Reduction of liability insurance costs;
- Reduction or elimination of litigation over the “cause” of electric system property damage;
- Enabling small utility systems and generators to participate in RTO West without having to insure against the risk of cascading service interruptions; and
- Keeping RTO West financially viable.

These objectives are accomplished through a “no fault” liability structure for electric system property damage, a tariff limitation of liability for service interruptions, and indemnity provisions for bodily injury claims.

The concept of a multiparty agreement limiting liability was reported to the RRG. Because this concept was addressed late in the RRG process, there was at that time no draft of an agreement for parties to review. The concepts accepted by the Legal Work Group were as follows:

- A. For contact with lines or equipment of a transmission, generation or distribution owner, the party that operates or maintains the system would hold other parties harmless from bodily injury claims.
- B. For end use customers' claims, RTO West would maintain \$150 million of general liability insurance, and \$150 million of errors and omission insurance, provided that the region would seek to obtain continuity of service tariff limitations in RTO West tariffs to attempt to keep this liability exposure within a manageable range.
- C. With limited exceptions, first party property damage between RTO West participants would be released, and each party would undertake to insure and protect its own property.
- D. Consequential damages among RTO West participants arising from participation in RTO West would be generally waived.
- E. Replacement power costs and defined opportunity costs would be recoverable from RTO West in the event that a wrongful dispatch order was issued by RTO West and caused damage to a party, provided that no party would be required to follow an unauthorized dispatch order.

Drafting occurred at meetings of the filing utilities on September 25 and September 26, 2000, to which all parties previously participating in the Liability and Insurance Legal Work Group subgroup were invited. However, attendance at these meetings was comprised primarily of filing utilities' risk managers and attorneys. Consequently, many parties to the public process will be seeing this document for the first time as a part of this filing proposal. For example, the discussion and decision to

make participation mandatory did not take place until the meetings of September 25 and 26, 2000.

The need for an agreement limiting liability arises from a combination of the need to deal with the existing agreement among Northwest parties limiting liability, known as the Agreement Limiting Liability Among Western Interconnected Systems (“WIS Agreement”)¹ executed in 1972, together with the need to address the potential that RTO West could be found to have assumed a duty to manage and operate the transmission system subject to its control for the purpose of preventing interruption of retail service due to transmission failures. Presently, under the WIS Agreement and WSCC Agreement and Bylaws, electric systems specifically do not assume such a duty toward other electric systems. Vestiges of sovereign immunity protect governmental entities (composing over 80% of the electric systems in the Northwest) and investor-owned systems have the benefit of state tariffs limiting liability as a condition of approved rates.

Absent the adoption of similar measures as a condition of Commission-approved transmission rates, RTO West, as a nonprofit corporation, will neither have the benefit of sovereign immunity presently available to governmental entity participants in the region, nor have the benefit of tariff protections limiting liability presently in existence for investor-owned participants under state-approved tariff rate structures existing in the region. The WIS Agreement has worked well for the region for nearly thirty years.

The limitation of liability model adopted by RTO West attempts to preserve the status quo existing in the rate structure of Northwest utilities by continuing voluntary limitations of liability among participants that presently exist under terms of the WIS

Agreement, and by providing for limitations of liability under a continuity of service tariff provision similar to what presently exists for investor-owned transmission utilities operating under tariffs approved by respective state commissions in the region. The filing utilities contemplate that RTO West would purchase general liability, errors and omission, directors and officers liability, and other insurance customary in the industry, as a cost of doing business. However, preservation of terms of the WIS Agreement and approval of tariff limitations of liability as a condition of rates approved by the Commission are deemed essential to maintaining the reasonableness of rates within the region, while ensuring the continuing availability of insurance and avoiding the potential for catastrophic liability in the event of a major transmission outage.

¹ The WIS Agreement was filed with the Commission in 1994 and was noted as a submittal that did not need to be filed. Director's Letter for D. Gelinas to J. Miller, Docket No. ER94-254, *et al.*, issued on October 13, 1994.